

ENTERED

October 22, 2021

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

BRAZOS ELECTRIC POWER
COOPERATIVE, INC.,Debtor.¹

Chapter 11

Case No. 21-30725 (DRJ)

BRAZOS ELECTRIC POWER
COOPERATIVE, INC. AND OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS,

Plaintiff/Plaintiff-Intervenor,

v.

ELECTRIC RELIABILITY COUNCIL OF
TEXAS, INC.,

Defendant.

Adv. Proc. No. 21-03863 (DRJ)

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION
TO DISMISS AND FOR ABSTENTION**
[Relates to Dkt. No. 23]

Upon consideration of Electric Reliability Council of Texas, Inc.'s ("Defendant") *Motion to Dismiss and for Abstention* (the "Motion"), any responses filed in connection with the Motion, and all arguments of counsel and evidence admitted at the hearing on the Motion (the "Hearing"); the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that

¹ The Debtor in this chapter 11 case, along with the last four digits of its federal tax identification number is: Brazos Electric Power Cooperative, Inc. (4729). Additional information regarding this case may be obtained on the website of the Debtor's claims and noticing agent at <http://cases.stretto.com/Brazos>. The Debtor's address is 7616 Bagby Avenue, Waco, TX 76712.

venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and after due deliberation and for the reasons stated on the record at the Hearing, it is

HEREBY ORDERED THAT:

1. Defendant's motion to dismiss Count 1 of the Complaint based on Federal Rule of Civil Procedure 12(b)(6) is **GRANTED**. Count 1 of the Complaint is dismissed, without prejudice to replead only that Count. If Plaintiffs choose to replead, they shall file an amended complaint no later than October 25, 2021.

2. Defendant's motion to dismiss Count 3 of the Complaint is **DENIED**.

3. Defendant's motion to dismiss Counts 1 through 5 of the Complaint based on Federal Rules of Civil Procedure 12(b)(7) and 19 is **DENIED**.

4. Defendant's motion to abstain is **DENIED**.

Signed: October 22, 2021.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

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